

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT OF
PUBLIC SAFETY,

Petitioner,

vs.

MICHAEL C. SCHINNER,

Respondent.

No. 13-1836 PO

DECISION

Michael C. Schinner is subject to discipline because he committed a criminal offense.

Procedure

On October 22, 2013, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Schinner’s peace officer license. Schinner was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on December 23, 2013. Schinner did not file an answer.

On January 24, 2014, the Director filed a motion for summary decision. We notified Schinner by letter dated January 27, 2014, that he should file his response to the Director’s motion by February 10, 2014. Schinner did not file a response.

Pursuant to 1 CSR 15-3.446(6)(A),¹ we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.²

By failing to answer or otherwise respond to the complaint, Schinner has admitted the allegations it contains.³ By failing to respond to the motion for summary decision, Schinner has failed to raise a genuine issue as to the facts the Director established in his motion.⁴

Accordingly, the findings of fact are based on the allegations contained in the complaint and the admissible documents attached to the Director's motion: business records authenticated by a custodian of records affidavit and certified court documents from the criminal case against Schinner.

The following facts, based on this evidence, are undisputed.

Findings of Fact

1. Schinner was licensed as a peace officer by the Director at all relevant times.
2. On December 24, 2011, Schinner committed two counts of second-degree assault.

While under the influence of alcohol, Schinner drove his motor vehicle in the wrong direction on De Tonty Street (a one-way street) in St. Louis. He hit another car and injured the driver and a passenger in that car.

3. On July 29, 2013, in the Circuit Court for the City of St. Louis, Schinner pled guilty to two counts of second-degree assault, a class C felony.⁵

4. The court suspended imposition of sentence on both counts and placed Schinner on five years' probation on each count.

²1 CSR 15-3.446(6)(B).

³1 CSR 15-3.380(7)(C).

⁴1 CSR 15-3.446(6)(B).

⁵Section 565.060, RSMo Cum.Supp. 2013.

Conclusions of Law

We have jurisdiction to hear this case.⁶ The Director has the burden of proving that Schinner has committed an act for which the law allows discipline.⁷ The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

Schinner received a suspended imposition of sentence on both counts of second-degree assault. Schinner's guilty plea and suspended imposition of sentence is not a final judgment⁸ and Schinner is not estopped from contesting it. However, he did not do so.

Section 565.060.1⁹ defines the crime of second-degree assault:

1. A person commits the crime of assault in the second degree if he:

* * *

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself[.]

"A person 'acts with criminal negligence' or is criminally negligent when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation."¹⁰ "[A] person is in an 'intoxicated condition' when he is under the influence of alcohol ..."¹¹

⁶ Section 590.080.2, RSMo Supp. 2013.

⁷ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

⁸ *Yale v. City of Independence*, 846 S.W.2d 193, 195 (Mo. 1993).

⁹ RSMo Supp. 2013.

¹⁰ Section 562.016.5, RSMo 2000.

¹¹ Section 577.001.3, RSMo Supp. 2013.

Here, Schinner was intoxicated because he was under the influence of alcohol. He caused physical injury to two other people. The element of criminal negligence is established by Schinner's driving in the wrong direction on a one-way street while intoxicated.¹² Schinner committed two counts of second-degree assault under § 565.060.1(4).

Summary

Schinner is subject to discipline under § 590.080.1(2). The hearing is canceled.

SO ORDERED on February 19, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹² See *State v. Kusch*, 712 S.W.2d 457, 460 (Mo. App. W.D. 1986) (“a combination of intoxication and driving on the wrong side of the road” suffices to show criminal negligence).